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6 **UNITED STATES DISTRICT COURT**
7 **DISTRICT OF NEVADA**

8 JAMAL DAMON HENDRIX,

9 Plaintiff,

10 v.

11 J. BARFIELD, *et al.*,

12 Defendants.

Case No.: 3:18-cv-00393-RCJ-WGC

ORDER

Re: ECF No. 7

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14 Before the court is Plaintiff's Motion to Exclude Case from Mediation (ECF No. 7).
15 Plaintiff requests the court exclude this case from mediation because "Defendants and their Nevada
16 Department of Corrections Employer and also their Deputy Director of NDOC Harold Wickham
17 had on numerous occasions never had respected the plaintiff's settlement proposals in the past
18 previous requests nor counteroffered them even when plaintiff offered to consolidated (sic)
19 pending cases for a reasonable settlement such as (personal property, etc., etc.) without monetary
20 value." (*Id.* at 1.) Plaintiff also contends that "prison officials at Ely State Prison have been using
21 their full restraints of belly chains which my hand (sic) are restricted to my sides with no movement
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1 while sitting down in a chair,” and also that the “mediator from past video conferences have been
2 more lienant (sic) in defendants’ favor during settlement proposals and counteroffers.” (*Id.* at 2.)

3 The history of this case reflects the court screened Plaintiff’s complaint and allowed
4 Plaintiff’s First Amendment retaliation claims based on the December 10, 2017 search of his cell
5 to proceed against Defendants J. Riveria, J. Mason, V. Belt, D. Frazier, A. Montes, S. Mollett, and
6 John Doe 1, Plaintiff’s First Amendment retaliation claim based on the March 11, 2018 search of
7 his cell to proceed against Defendants Esquivel, Adams, Ornelas, Herrera, Filson, and Wickham,
8 and Plaintiff’s First Amendment retaliation claim based on his food being tampered to proceed
9 against Defendants Ivie and Barfield. (ECF No. 4 at 11.) The court ordered a ninety-day stay on
10 further filings and directed the parties to participate in a settlement conference. The court indicated
11 it would refer the case to the court’s Inmate Early Mediation Program. In the meantime, Plaintiff’s
12 obligation to pay the \$350.00 filing fee, either in full or in installments if Plaintiff was granted *in*
13 *forma pauperis* status, was stayed.

14 The court’s screening order, however, allowed a party to seek to remove the case from the
15 inmate mediation program. (ECF No. 4 at 12.) Plaintiff filed a timely request to exclude the case
16 from the Inmate Mediation Program. (ECF No. 7.) Plaintiff’s rationale is that (1) Defendants and
17 NDOC “never had respected the plaintiff’s settlement proposals in the past previous requests nor
18 counteroffered them even when plaintiff offered to consolidated (sic) pending cases for a
19 reasonable settlement such as (personal property, etc., etc.) without monetary value,” (2) the
20 “prison officials at Ely State Prison have been using their full restraints of belly chains which my
21 hand (sic) are restricted to my sides with no movement while sitting down in a chair,” and (3) the

1 “mediator from past video conferences have been more lenient (sic) in defendants’ favor during
2 settlement proposals and counteroffers.” (*Id.* at 1, 2.)

3 In the court’s extensive experience with the mediation and settlement conference process,
4 parties would frequently express pessimism that their case had any chance of settlement. Yet, on
5 numerous occasions, the parties were indeed able to come to an accord and successfully resolved
6 their dispute. Certainly not all of the “unsettle-able” cases settled, but many do. One fact that is
7 fairly undisputable is that if the parties do *not* at least undertake a settlement dialogue, the case
8 will most definitely *not* settle.

9 Even if a case does not settle, there is nevertheless a benefit to the parties by exploring and
10 addressing the strengths and weaknesses of their claims and defenses. From the perspective of the
11 governmental defendants, the discussions may shed light on potentially errant policies, decisions,
12 procedures or activities and possibly allow corrective action to be undertaken. And from the
13 standpoint of an inmate Plaintiff, he may be educated about the technical nuances of § 1983
14 litigation which may cause him to re-evaluate the propriety of his claims. In either event, it cannot
15 be overlooked that an early settlement of an inmate’s case allows him to avoid immediately
16 incurring the expense of the \$350.00 filing fee which would otherwise have to be paid to the court
17 if the case were to proceed in the absence of mediation.

18 Therefore, to further the interests of justice, this matter will proceed to the Inmate Early
19 Mediation Program in accordance with the court’s screening order (ECF No. 4).

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1 Plaintiff's Motion to Exclude Case from Mediation (ECF No. 7) is **DENIED**.

2 **IT IS SO ORDERED.**

3 DATED: November 6, 2019.

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8 WILLIAM G. COBB
9 UNITED STATES MAGISTRATE JUDGE
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